

Before The
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.



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In re:

Review of the Commission's
Regulations Governing Attribution
of Broadcast and Cable/MDS Interests

MM Docket No. 94-150

Review of the Commission's
Regulations and Policies
Affecting Investment
in the Broadcast Industry

MM Docket No. 92-51

Reexamination of the Commission's
Cross-Interest Policy

MM Docket No. 87-154

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To: The Commission

COMMENTS OF BET HOLDINGS INC.

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February 10, 1997

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Executive Summary

The Federal Communications Commission ("FCC" or "Commission") must evaluate the cumulative impact of recent changes to broadcast television rules before it adopts the proposed rules in this and related broadcast ownership proceedings.^{1/} The FCC's decisions in these proceedings will ultimately determine whether new entrants will have any opportunity to participate in broadcasting as it moves to the digital age, or whether regulatory and competitive entry barriers will be so high that incumbent broadcasters will dominate the broadcast marketplace. The Commission's statutory diversity obligations pursuant to Section 307(b), the impact of recent changes to broadcast licensing rules and digital television rules pursuant to the 1996 Telecommunications Act, and the Commission's broadcast public interest obligations, must be assessed in the aggregate when considering further changes to broadcast ownership and attribution rules.

Section 307(b) of the Act^{2/} mandates that the Commission distribute licenses in a fair, efficient and equitable manner. The Commission's Section 307(b) obligation is not ameliorated

^{1/} To assess the impact on consolidation and diversity of ownership in TV broadcasting, the FCC must analyze the overall impact of its pending actions in the Digital Television licensing proceeding as well as the following ownership/attribution proceedings. 1) Broadcast Television National Ownership Rules (MM Docket No. 96-222); Review of the Commission's Regulations Governing Broadcast Television (MM Docket No. 91-221); Television Satellite Stations Review of Policy and Rules (MM Docket No. 87-8), Notice of Proposed Rulemaking, FCC 96-437; released November 7, 1996 (hereinafter, "National Ownership Proceeding"); 2) Review of the Commission's Regulations Governing Broadcast Television, MM Docket No. 91-221 and Television Satellite Stations Review of Policy and Rules, MM Docket No. 87-7, Second Further Notice of Proposed Rulemaking, FCC 96-438, released November 7, 1996 ("Local Ownership Proceeding"), and Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, MM Docket No. 94-150, Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry, MM Docket No. 92-51, and Reexamination of the Commission's Cross-Interest Policy, Further Notice of Proposed Rulemaking, MM Docket No. 87-154, FCC 92-436, released November 7, 1996 (hereinafter, "Attribution Proceeding").

^{2/} "[T]he Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several states and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." Section 307(b) of the Communications Act of 1934, as

by the fact that "over-the-air" broadcast television competes with other video services, such as cable or VCRs. Over-the-air broadcasting is the only place where the Commission can foster "a universal forum for the exchange of national and local discourse that is available to all members of the public [because] . . . unlike other services, broadcast television is freely accessible to everyone."^{3/} For potential new entrants, obtaining a broadcast license is the last opportunity to enter the media marketplace. The capital requirements for entry into cable or Direct Broadcast Satellite ("DBS") are too high for most local businesses.^{4/}

The Commission must uphold its statutory mandate to eliminate market entry barriers and ensure that small businesses are not foreclosed from participating in the ongoing communications revolution.^{5/} In this context, the Commission must consider the effects of ownership concentration and predictability of access to capital for new entrants into

amended (hereinafter, "Act"), 47 U.S.C. § 307(b).

^{3/} Comments of Black Citizens for a Fair Media, et. al., in Review of the Commission's Regulations Governing Television Broadcasting, MM Docket No. 91-221, filed May 17, 1995, at 19-20. Broadcasters are trustees of the public airwaves and must serve the public interest in their programming. Local programming is an important component of the broadcasters' public interest obligation. Similar local programming requirements are not imposed on other video providers, such as DBS licensees. See *Id.* at 15-31. Local broadcasters continue to supplement DBS service with local programming, as well as provide 61% of the programming viewed by cable systems. Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Third Annual Report, FCC 96-496, at p. 50-51, released January 2, 1997 (hereinafter, "Report").

^{4/} The January, 1996 DBS auction winner bid \$682 million for the licenses. For the first nine months of 1996, 81 cable transactions totaling \$15.6 billion dollars, or \$2,078 per subscriber, were announced. *Report*, supra note 3, at 11.

^{5/} In the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, GN Docket No. 96-113 Notice of Inquiry, 11 FCC Rcd 6280 (1996).

broadcasting.^{6/} The Commission also has a statutory mandate to ensure that the public interest, convenience, or necessity will be served by grant of broadcast licenses.^{7/}

Diversity of sources of information is a critical element of the public interest calculus. It has been a "fundamental purpose" of Commission regulation of broadcasting for nearly 50 years "to promote diversification of ownership in order to maximize diversification of program and service viewpoints."^{8/} Diversification of control of the broadcast media is particularly desirable where, as here, a government licensing system limits access by the public to the use of television facilities.^{9/} As the U.S. Supreme Court has noted, the First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."^{10/} The courts have also noted the importance of government's actions not being the cause of concentration of control of the sources of news and opinion.^{11/}

BET urges the Commission to use the television broadcast market as the relevant market for examining competitive entry barriers. Thus, the Commission should assess the impact of its actions on consolidation problems within the broadcast TV market. The market definition of multichannel video programming delivery, which is based on the definition of a cable system and uses cable franchise areas as the relevant geographic market, is not the correct market definition

^{6/} See, *Id.* at 6287, citing Competitive Bidding Fifth Report and Order, 9 FCC Rcd 5532, 5535 (1994).

^{7/} 47 U.S.C. § 307(a); 47 U.S.C. 309(a).

^{8/} Amendment of Sections 3.35, 3.240, and 3.636 of Rules and Regulations Relating to Multiple Ownership of AM, FM and Television Broadcast Stations (Report and Order), 18 FCC 288, 291 (1953).

^{9/} Policy Statement of Comparative Broadcast Hearings, 1 FCC 2d 393, 394 (1965).

^{10/} Associated Press v. U.S., 326 U.S. 1, 20 (1945).

^{11/} Scripps-Howard Radio, Inc. v. F.C.C., 189 F.2d 677 (D.C. Cir. (1951), *cert denied*, 342 U.S. 830.

to examine proposed changes in the over-the-air, broadcast television market.^{12/} Unless the Commission uses the broadcasting market to examine the effect of any proposed changes, Section 307(b) diversity obligations will be effectively "written out" of the Communications Act.

Consolidation of TV broadcast ownership will increase significantly because of several factors: 1) changes to FCC broadcast licensing procedures, 2) changes to FCC national ownership rules, 3) deregulation of the financial interest and syndication restrictions, and 4) the Digital Television ("DTV") licensing plan. An unprecedented number of mergers and acquisitions have occurred since elimination of the financial interest and syndication rules and passage of the Telecommunications Act of 1996 (the "Telecom Act").^{13/} Over \$10 billion in television transactions occurred in 1996, more than doubling the \$4.6 billion that occurred in 1995.^{14/} Without careful consideration of these factors, further actions by the FCC to relax TV ownership and attribution rules will increase broadcast ownership concentration among a small group of incumbent broadcasters and create insurmountable barriers to new entrants in digital, as well as analog, TV broadcasting.

Recent changes to the broadcast licensing rules also will hasten the further concentration of broadcast ownership. The Commission has lengthened the broadcast license terms of television stations from 5 years to 8 years,^{15/} implemented a new two-step broadcast renewal

^{12/} This multi-channel video programming market analysis derives from the cable regulation set forth in the Cable Television Consumer Protection and Competition Act of 1992, Public L. No. 102-385, 106 Stat. 1460 (1992).

^{13/} Pub. L. 104-104, 110 Stat. 56 (1996).

^{14/} "Consolidation Yea or Nay," Broadcasting and Cable, p. 4, January 27, 1997.

^{15/} Implementation of Section 203 of the Telecommunications Act of 1996 (Broadcast License Terms) Sections 73.1020 and 74.15, 12 FCC Rcd ____, MM Docket No. 96-60, FCC 97-17, released January 24, 1997.

process that eliminates comparative renewal hearings and essentially renews broadcast licenses automatically,^{16/} and "frozen" applications for new television station allotments.^{17/} These rules severely curtail the opportunity for new entrants to acquire television licenses. Existing broadcasters keep their licenses longer, and are virtually assured of license renewal. In addition, new entrants cannot file applications for new, competing stations.^{18/} While new entrants are frozen out of the broadcast TV markets, incumbent broadcasters can continue to combine with other incumbents to increase their market presence, up to 35% of the national audience.^{19/}

The DTV licensing process also will magnify incumbent broadcasters' market power.

The FCC has proposed that each incumbent "full-service" broadcaster will be given an additional 6 MHz channel to implement DTV.^{20/} The Commission has also adopted DTV technical

^{16/} Renewal expectancies are granted provided the licensee has met certain public interest requirements. Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures) 11 FCC Rcd 6363 (1996).

^{17/} The Commission froze applications for the top 30 broadcast markets in 1987. Advanced Television Systems and Their Impact Upon Existing Television Broadcast Service, MM Dkt. No. 87-268, Order, 2 FCC Rcd 5125 (1987). The Commission froze remaining markets on September 20, 1996, and also provided that any applications filed after October 24, 1991 that had not yet been granted would not receive a 6 MHz DTV channel. Advanced Television Systems and Their Impact Upon Existing Television Broadcast Service, MM Docket 87-268, Sixth Further Notice of Proposed Rulemaking, 11 FCC Rcd 10968, 10973 (1996). The Commission has also frozen processing of all mutually exclusive application cases, creating further barriers to new entrants. See Bechtel v. F.C.C., 10 F.3d 875 (D.C. Cir. 1993), FCC Public Notice, "FCC Freezes Comparative Hearing Proceedings," 9 FCC Rcd 1055 (1994), as modified, 9 FCC Rcd 6689 (1995).

^{18/} Id. at 11013.

^{19/} Order, FCC 96-91, released March 8, 1996, 61 FR 10691.

^{20/} Memorandum Opinion and Order/Third Report and Order/Third Notice of Proposed Rulemaking, MM Docket 87-268, 7 FCC Rcd 6924, 6926 (1992). The Act requires initial DTV licenses to be allocated to incumbents for free. Broadcasters must pay spectrum fees for providing ancillary services on these DTV channels. 47 U.S.C. § 336(e). The value of the DTV spectrum, if auctioned, has been estimated between \$10 and \$70 billion. "The Great HDTV Swindle," Wired, p. 57, 60, February 1997. The Congressional Budget Office ("CBO") has scored the DTV spectrum at \$12 billion if it were auctioned. Joint Statement of David H. Moore and Perry C. Beider, Congressional Budget Office, before the Subcommittee on Telecommunications and Finance, Committee on Commerce, U.S. House of Representatives, March 21, 1996, at 13.

standards that will allow existing broadcasters to provide multiple streams of standard definition programming.^{21/} Further, spectrum flexibility allows DTV channels to be used for other types of wireless communication services.^{22/} Thus, the extra DTV channel that the Federal Communications Commission will give away for free to incumbent "full power" broadcasters doubles the amount of spectrum allocated to incumbent TV broadcasters and increases their broadcast market power exponentially.^{23/}

Against the backdrop of recent changes to existing rules, the Commission has proposed changes to local and national ownership rules and attribution rules that will increase concentration among incumbent broadcasters. Specifically, in three related proceedings, the Commission proposed 1) modifications in the calculation of national audience reach,^{24/} 2) proposed to use a Grade A contour instead of a Grade B contour for calculating permitted local ownership structures,^{25/} 3) proposed changes to the attribution rules that will decrease

^{21/} Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Fourth Report and Order, 11 FCC Rcd ____, MM Docket 87-268, released December 27, 1996, at 4.

^{22/} Id.

^{23/} "The acquisition by broadcasters of an additional license (apparently at no charge), then, is more than a property rights grab without parallel in the United States since the days of our previous robber barons, the railroads. It is also an extraordinary denial of our professed commitments to increase competition, to lower entry barriers, and to expand opportunities for historically excluded persons in the broadcasting industry." Krattenmaker, Thomas G., "The Telecommunications Act of 1996," Federal Communications Bar Journal, November 1996. The Telecommunications Act of 1996 also "exacerbates a fundamental flaw in our regulatory policy toward broadcasting: the use of spectrum allocation to confer market power on a closed class of privileged broadcasters." Id. at 41.

^{24/} National Ownership Proceeding, supra n. 1 at 1-2.

^{25/} Local Ownership Proceeding, supra n. 1 at 7.

predictability and flexibility,^{26/} and 4) proposed changes to the treatment of TV Satellite stations, LMAs, and JSAs for the purposes of the national and local ownership caps.^{27/}

In considering comments in these proceedings, the Commission should "resist pressure from those who urge the Commission to restrict market forces in order to protect their private interests rather than to promote the public interest."^{28/} BET urges the Commission to prevent further concentration of broadcast ownership and avoid creating potential market entry barriers to new entrants as it considers changes to these rules. In considering market entry and public interest factors, the Commission should take special note of the minorities, women and small businesses. Minority-owned businesses only hold 3% of all television broadcast licenses.^{29/} Empirical studies have demonstrated a strong correlation between ownership by minority businesses and diversity of programming.^{30/} Congress has also eliminated tax certificates to promote minority and women ownership in television.^{31/} More recently, the Commission has proposed rules that will reduce the enforcement of equal opportunity recruitment and hiring of minority and women applicants.^{32/} By providing incentives for new entrants to participate in TV

^{26/} Attribution Proceeding, supra n. 1 at 5.

^{27/} National Ownership Proceeding, supra n. 1 at 9-10, Attribution Proceeding, supra n. 1 at 26, 32.

^{28/} Using Market-Based Spectrum Policy to Promote the Public Interest, Gregory L. Rosston and Jeffrey S. Steinberg, Federal Communications Commission, January 1997.

^{29/} Minority Commercial Broadcast Ownership in the United States. The Minority Telecommunications Development Program, National Telecommunications and Information Administration, United States Department of Commerce, April, 1996.

^{30/} Congressional Research Service, Minority Broadcast Station Ownership and Broadcast Programming: Is there a nexus? (June 29, 1986 at 13, 15.).

^{31/} Self-Employed Health Insurance Act of 1995, Pub. L. No. 104-7, §2, 109 Stat. 93 (1995).

^{32/} Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines, Notice of Proposed Rulemaking, 11 FCC Rcd 5154 (1996).

broadcasting, the Commission will promote its 307(b) diversity public interest obligation by increasing the pool of potential participants among minorities, women, and small businesses. BET encourages the FCC to adopt incentives for new entrant participation in broadcasting, which would satisfy the Commission's statutory obligation to fairly and equitably distribute licenses, eliminate market entry barriers, and serve the public interest. BET specifically addresses the issues raised in the "broadcast attribution" ownership" proceeding below.^{33/}

^{33/} BET is filing comments simultaneously in the Commission's three related broadcast attribution and ownership proceedings: 1) Broadcast Television National Ownership Rules (MM Docket No. 96-222); Review of the Commission's Regulations Governing Broadcast Television (MM Docket No. 91-221); Television Satellite Stations Review of Policy and Rules (MM Docket No. 87-8), Notice of Proposed Rulemaking, FCC 96-437; released November 7, 1996; 2) Review of the Commission's Regulations Governing Broadcast Television, MM Docket No. 91-221 and Television Satellite Stations Review of Policy and Rules, MM Docket No. 87-7, Second Further Notice of Proposed Rulemaking, FCC 96-438, released November 7, 1996, and Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, MM Docket No. 94-150, Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry, MM Docket No. 92-51, and Reexamination of the Commission's Cross-Interest Policy, Further Notice of Proposed Rulemaking, MM Docket No. 87-154, FCC 92-436, released November 7, 1996.

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Cross-Interest Policy)	
)	

To: The Commission

COMMENTS OF BET HOLDINGS INC.

BET Holdings, Inc. hereby submits its comments in the above captioned proceeding related to attribution broadcast investment and the cross-interest policy. BET is a cable television entertainment business that reaches over 45 million cable households through its cable programming services, BET Cable Network, BET on Jazz, and Action Pay-Per-View. BET also produces feature length films through its ventures with BET Film Productions, BET Pictures, and United Image Entertainment. BET has also partnered with Microsoft to develop on-line programming and interactive software products for African-American consumers.

I. The Commission Should Adopt Rules Which Assist New Entrants Into The Television Market And In Particular New DTV Entrants.

The Commission has requested comments on several rule changes that could increase barriers to enter for potential new entrants seeking licenses in the TV and DTV markets. Further, several of the proposed changes could produce uncertainties that deter investors and hinder opportunities for new entrants.^{1/} Such uncertainty, when coupled with the complexity of the various Commission proposals, will operate to hinder capital formation. In this docket, the Commission should provide incentives for new entrants who seek licenses in the TV and DTV markets.^{2/}

A. The Commission Should Not Adopt The "Equity or Debt Plus" Approach Because It Will Hinder Entry Into The Television Market.

Under the Commission's "debt or equity plus" approach, if a program supplier to a licensee or a same market broadcaster or other media outlet subject to the Commission's cross-ownership rules holds a 33% debt and/or equity interest in a licensee, then the interest in the licensee would be attributed to the interest holder.^{3/} BET opposes this approach and urges the Commission to retain the current "equity only" approach. The proposed "debt or equity plus" approach is too unpredictable and complex for new entrants into the TV or DTV market.

^{1/} BET agrees with Post-Newsweek Stations, Inc.'s previously filed comments that many of the current rules adequately promote the "Commission's dual public interest goals of diversity and competition." See Notice of Ex Parte Communications of Post-Newsweek Stations, Inc., MM Docket Nos. 95-92, 95-90, 91-221, 94-150; at 1; cf. Comments of Silver King Communications, Inc., MM Docket Nos. 94-150, 92-51, 87-154; at 8-9 (stating that the current attribution rules have worked well in promoting small business, female, and minority business owners who are under represented in the broadcast industry.)

^{2/} See Comments of Cook Inlet Region, Inc., MM Docket Nos. 94-149, 91-140, 94-150, 92-51, 87-154, 91-221, 87-8; at 20-22. See comments of the National Association of Black Owned Broadcasters ("NABOB"), MM Docket Nos. 91-221, 87-8, 94-149, 91-140, 94-150, 92-51, 85-154; at 11.

^{3/} See Further Notice of Proposed Rulemaking, FCC 96-436, ¶¶ 12-14 (released November 7, 1996) (hereinafter "Further Notice").

The "debt plus equity" approach creates excessive uncertainty for potential new DTV entrants. Such entities would have to determine whether potential partners qualified as "same market broadcasters." Further, if this rule is only applied prospectively, incumbent broadcasters would benefit from the current rules, while potential new entrants who need the most flexibility would suffer. New entrants seeking financial partners would be required to make complex determinations concerning the various forms of debt held by their potential partners. Thus, this proposal would likely "chill" traditional sources of investment capital support from banks, private investors, and venture capitalists. Such uncertainty would inhibit the capital formation necessary to permit new entrants into the television and DTV markets.

B. The Commission Should Not Attribute The Contractual Relationships of Program Suppliers Except For Equity Ownership.

Similarly, the Commission should not attribute the contractual relationships of program suppliers. Such attribution would create excessive uncertainty for potential new entrants, particularly if they are considering joint ventures and other possibilities. New entrants would have to screen potential partners to determine if they fell within the yet undefined category of "program supplier." These uncertainties would deter potential new entrants from participating in the DTV market and "chill" potential sources of capital investment support.

C. The Commission Should Increase The Voting Stock Benchmarks For New TV And DTV Entrants Only.

The Commission proposes to increase the voting stock benchmarks from five to ten percent for active investors and from ten to twenty for passive investors.^{4/} BET agrees that the benchmarks should be increased, but only for new TV and DTV entrants. Increasing the benchmarks to these levels for new entrants will promote diversity among new entrants by

^{4/} Further Notice, ¶ 36.

encouraging increased partnerships and joint ventures with potential investors. Greater opportunities for new entrants to partner with other entities will result if more flexibility is targeted under the attribution rules to such parties. Such attribution/capital formation incentives will provide more realistic opportunities for new entrants to enter the TV and DTV markets.

The Commission should not increase the voting stock benchmarks for existing television licensees. To do otherwise would permit existing owners to invest in new stations without having these interests attributed to them. Without limiting the proposed attribution benchmark to new entrants, incumbent TV group owners will extend their control and influence further in the broadcast television markets.^{5/}

II. The Commission Should Not Adopt Rules Increasing Consolidation In The Television Market That Would Hinder Competition and Diversity.

In the Commission's prior television ownership proceeding, several commenters relied upon a report prepared by Economists Inc. to assert that greater concentration of broadcast media would lead to greater diversity.^{6/} BET believes that the assumptions and conclusions of the report are flawed.^{7/} In fact, the significant consolidation of broadcast television is reducing the diversity of voices and programming in broadcast television markets.^{8/} The broadcast television

^{5/} See generally the Executive Summary, supra, for a discussion of FCC actions that contribute to consolidation of the broadcast television market.

^{6/} See generally the comments of Westinghouse, CBS, NBC, and ABC in the prior television ownership proceeding, MM Docket Nos. 91-221 and 94-150.

^{7/} BET supports the previously filed comments of Black Citizens for a Fair Media in a prior proceeding, which detail the flaws inherent in the report's conclusions, as discovered by independent experts consulted to evaluate the report's methods and assumptions. See Comments of Black Citizens for a Fair Media, MM Docket Nos. 91- 22, 87-8.

^{8/} BET agrees with the prior comments of the National Association of Black Owned Broadcasters ("NABOB") that permitting further consolidation in the television market would have a deleterious effect upon minority-owned television stations. See Comments of the NABOB, MM Docket Nos. 94-149, 91-140, 94-150, 92-51, 87-154, 91-221, 87-8; at 13.

market is the relevant market with reference for § 307(b) diversity analysis.^{9/} The Commission should not distort the market further by adopting rules that would produce greater market concentration.^{10/}

A. The Commission Should Attribute LMAs On The Same Basis As Radio LMAs.

The Commission has proposed rules to govern Local Marketing Agreements ("LMAs")^{11/} for television.^{12/} In the radio service, if a licensee obtains more than 15% of brokered time from another radio station in the same market, the brokering station must count the brokered station towards its local ownership limits.^{13/} Likewise in the television context, a station should be counted towards the local and national ownership limits for the brokering station if the other station brokered more than fifteen percent of the station's time through an LMA.

BET believes that the Commission should adopt this rule without delay.^{14/} Under the current system, stations may utilize LMAs to bypass restrictions on national and local ownership. Stations exert considerable control over other stations by entering into LMAs whereby they program blocks of broadcast time from the other stations, as well as the advertising supporting such programming. Non-attribution of LMAs will continue to allow increased control and

^{9/} See Executive Summary, *supra*.

^{10/} See generally the Executive Summary, *supra*, for a discussion of past and future actions that have or will contribute towards the concentration and consolidation of the broadcast television market.

^{11/} LMAs are defined as "a type of contract that generally involves the sale by a licensee of discrete blocks of time to a broker that then supplies the programming to fill that time and sells the commercial spot announcements to support the programming." *Further Notice*, at ¶ 26.

^{12/} *Id.* at ¶ 27.

^{13/} See 47 C.F.R. § 73.3555(a)(2)(i). In the past, the brokered radio station was also included for calculating national audience reach. However, the Commission recently abolished national ownership limits for radio stations. 61 Federal Register 10689, March 15, 1996.

^{14/} Media America Corporation supported this view in its comments in an earlier proceeding. See Comments of Media America Corporation, MM Docket Nos. 91-221, 87-8; at 10.

influence over broadcast TV stations by a few group owners and allow such entities to continue to evade the national and local ownership restrictions through such arrangements. Further consolidation of control via LMAs inhibits competition and creates massive barriers to entry for potential new entrants.

B. The Commission Should Attribute Joint Sales Agreements When Calculating Ownership Interests.

Similarly, the Commission should attribute Joint Sales Agreements ("JSA")^{15/} when evaluating entities' ownership interests for purposes of the national and local ownership restrictions. Control over spot sales by one station gives significant power over the other. Non-attribution of JSAs would allow entities to bypass restrictions on national and local ownership and increase consolidation in the TV market. An entity would be able to control or influence an increasing number of media interests. As with LMAs, such consolidation would adversely affect competition by increasing barriers to entry for new entrants.

C. The Commission Should Not Grandfather Existing Relationships.

The Commission should not grandfather existing relationships to comply with a change in the ownership rules. Recently, the Commission has relaxed the national television multiple ownership rules and the local radio ownership rules, and has abolished the national radio ownership limits.^{16/} The proposed attribution rule changes should not greatly disrupt existing financial and operational arrangements in this deregulated environment.

As an alternative to grandfathering existing attribution structures, the Commission should consider granting predictable waivers based upon market concentration and size. The Commission might consider adopting a waiver standard based upon the radio-television

^{15/} JSAs are defined as "agreements for the joint sales of broadcast commercial time." Further Notice, ¶ 33.

^{16/} For a discussion of these changes, see the Executive Summary, supra.

cross-ownership rule currently in use.^{17/} Under this standard, an entity would be granted a waiver in the top 25 television markets if there would be at least 30 independently owned broadcast voices in the market after the acquisition of another entity. This approach would ensure that entities who were adversely affected by attribution rule changes could obtain relief, but only if it would not increase market consolidation.

In addition to the top 25/30 market attribution waiver approach, BET urges the Commission to consider a 24 - month transition period for current attribution relationships that would require modification.^{18/} While this approach does not afford the protection against consolidation inherent in the predictable waiver approach, it protects new entrants against market consolidation by only permitting incumbent broadcasters to bypass any modified attribution rules for a defined period of time.

^{17/} See 47 C.F.R. § 73.3555. n. 7.

^{18/} See Further Notice, ¶ 40.

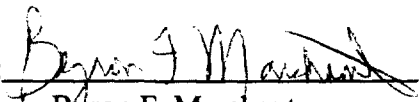
CONCLUSION

The Commission should adopt rules that will facilitate entry into TV and DTV markets. To accomplish this goal, the Commission should not adopt its proposed "equity or debt plus" approach, nor attribute any contractual relationships of program suppliers outside of equity ownership interests. The Commission should act to increase the voting stock benchmarks for attribution purposes, but it should only increase these levels for new TV and DTV entrants.

The Commission should decline to adopt rules that would increase the concentration of ownership interests in the broadcast television market. The Commission should attribute television LMAs on the same basis as radio LMAs and attribute joint sales agreements. It should not grandfather existing relationships that would violate any new attribution rules, but rather the Commission should grant waivers based on predictable criteria and institute a 24 month transition period.

Respectfully submitted,

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